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CS Docket No. 98-120

To: The Commission

**COMMENTS  
OF  
RETLAW ENTERPRISES, INC.**

Retlaw Enterprises, Inc. (“Retlaw”) hereby submits the following comments in response to the Commission’s “Notice of Proposed Rulemaking” (FCC 98-153) released in the above-captioned matter on July 10, 1998.

### Preliminary Statement

Retlaw is the owner and operator of ten television stations serving small or medium size markets scattered throughout California, the upper northwest states of Washington, Oregon and Idaho, and the state of Georgia.<sup>1</sup> It offers these limited comments from that

<sup>1</sup> Retlaw is the corporate parent of entities that are the broadcast licensees of the following stations: KJEO-TV, Fresno, California; KIMA-TV, Yakima, Washington, KEPR-TV, Pasco, Washington; KLEW-TV, Lewiston, Idaho; KIDK-TV, Idaho Falls, Idaho; KBCI-TV, Boise, Idaho; KVAL-TV, Eugene, Oregon, KCBY-TV, Coos Bay, Oregon; WFXG-TV, Augusta, Georgia; and WXTX-TV, Columbus, Georgia. In addition, Retlaw, through affiliated entities,

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perspective and as a general endorsement of the more comprehensive comments submitted in this proceeding by the National Association of Broadcasters ("NAB").

**Retlaw Urges the Commission to Take A  
Pro-Active Role In Establishing Meaningful  
Cable Carriage Rights For TV  
Stations Inaugurating DTV Service**

Retlaw recognizes that this proceeding presents some difficult technical and practical considerations, many of which may require additional experience and/or the passage of time before they can be resolved in any definitive fashion. Nonetheless, it is absolutely crucial that the Commission, at the outset, establish a plan and articulate a commitment to ensure that the new DTV service it unleashed only last year be permitted to develop as rapidly as possible. At a minimum, this requires that the new DTV signals launched by local television stations be made available to the majority of their viewing public who currently receive their signals by means of cable television.

While lacking in certain specifics with respect to the transition from analog to digital, the Communications Act, as amended by both the 1992 Cable Act and the Telecommunications Act of 1996, is absolutely clear that Congress established a cable carriage requirement for local television stations that contemplated future transmissions in the more advanced digital mode. Just as importantly, the Commission was assigned the specific role of ensuring that this basic carriage requirement not be undermined or neglected in the move to digital. It must, therefore, vigorously exercise that role by setting the necessary standards. The mandated roll

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is the 50% owner of KPIC-TV, Roseburg, Oregon.

out of DTV service must not, just as it approaches the starting gate, be left solely to the vicissitudes of the marketplace.

Ironically, small and medium size market stations such as those operated by Retlaw, which will bear the greatest financial burden in converting to digital, will bear the greatest additional burden if the Commission fails to act positively and promptly. Small stations or those not network owned or part of the largest national broadcast groups could, in fact, suffer the most if the Commission does not act decisively with respect to the earliest possible cable carriage of the new DTV signals.

In Retlaw's view, the Commission should adopt specific rules and general principles ensuring cable carriage of DTV signals sooner rather than later.<sup>2</sup> Stations, particularly those not in the largest markets or supported by the largest groups, need to know now that the investments and hard work they will expend over the next few years to build their own replacement stations (i.e., for their NTSC service) will result in at least being afforded the opportunity of receiving minimum carriage protection on "bottleneck" cable systems. Even

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<sup>2</sup> At one point in the Notice the Commission suggests, incorrectly we believe, that because nearly 80% of TV stations supposedly opted for retransmission consent over "must carry" during the 1993-1996 "election" cycle, it is possible that many of the transitional issues involved in this proceeding will be resolved through retransmission negotiations - - thereby minimizing the Commission's regulatory role. Notice, Para. 33. First, the factual premise underlying the suggestion is totally unsupported and, we suspect, completely inaccurate. The only citation is to an article by a Massachusetts law clerk who, on the vital point in question, seems to rely exclusively on a single 1993 article from a daily newspaper, the San Francisco Chronicle. Second, based on Retlaw's experience, stations in medium and small markets, in particular, have more commonly opted for "must-carry". Third, the issues and circumstances involved in the digital transition, where stations are launching an entirely new service rather than asserting protective rights for a preexisting programming service, render this situation completely different in any event.

more importantly, the viewing public that will be encouraged to purchase new, more expensive digital sets, must have every possible opportunity to actually receive the new, additional signals - - either off-the-air or via cable.

Accordingly, Retlaw strongly votes for an extension of the existing retransmission consent/must-carry system to include a local TV station's digital as well as analog signal during the transition from analog to digital. In our view, that is what was intended by Congress and that is what is essential to making the transition both reasonably successful as well as reasonably short. As the Commission's Notice correctly acknowledges, establishing an unmistakable carriage obligation at the outset . . . "would provide regulatory certainty to the television industry and provide assurance that investment in digital technology and programming will be fully realized. Moreover, digital broadcasters would be assured of reaching the audience they are licensed to serve. This option may also accelerate the transition period and thus, speed the recapture of the analog spectrum for auction by the Commission." Notice, para. 41.

In short, this option is the one most consistent with the scheme devised by Congress and most capable of serving the overall public interest. While it is not without difficulties, virtually any step in this technological evolution will be confounded by some temporary, practical difficulties. But resolving such difficulties goes to the implementation phase of the new standard - - not to the standard itself.

Inevitably, some short-term exceptions will be necessary for smaller, less capable systems or for those systems confronted by the most severe carriage requirements. Likewise, deadlines for compliance will need a certain flexibility as all the interested parties (broadcasters, cable operators, equipment manufacturers and retailers) gain experience with

the new technology. But, again, these are implementation issues - - best decided by the Commission after it is presented with all relevant evidence.

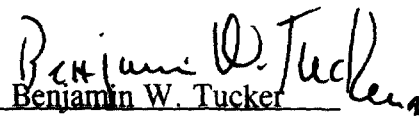
What must not be hedged or deferred is the Commission's responsibility to the American viewing public to pursue all available measures to ensure that this new, potentially extraordinary, service has a full opportunity to gain a foothold and then flourish. Having gone down this path, it is the Commission's unique responsibility, we submit, to ensure that DTV has the maximum chance to gain that initial foothold. Cable carriage under the established retransmission consent/must-carry scheme is vital to that end. Once that foothold is established, it is obviously the broadcaster industry's responsibility to find the best ways to make the new service flourish for the diverse public it is licensed to serve.

### **Conclusion**

For the foregoing reasons, and those expressed in more detail in the comments of the NAB, Retlaw Enterprises, Inc. urges the Commission to declare, without reservation or delay, that DTV signals broadcast by otherwise eligible local TV stations are entitled to the same cable carriage rights for their new DTV signals as their existing analog signals.

Respectfully submitted,

RETLAW ENTERPRISES, INC.

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